
 THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 97 Session of
2019

INTRODUCED BY RAPP, REESE, KAUFFMAN, LAWRENCE, MIZGORSKI,
TOEPEL, PICKETT, NEILSON, HILL-EVANS, MULLERY, STEPHENS,
MILLARD, FREEMAN, WARREN, CIRESI, STAATS, DeLUCA, HAHN,
HERSHEY, SIMS, NELSON, MARSHALL, IRVIN, BRIGGS, McCARTER,
BROWN, DUSH, WHEELAND, HOWARD AND ORTITAY, JANUARY 28, 2019

SENATOR BAKER, JUDICIARY, IN SENATE, AS AMENDED,
NOVEMBER 18, 2019

AN ACT

1 Amending ~~Title~~ TITLES 18 (Crimes and Offenses) AND 53 <--
2 (MUNICIPALITIES GENERALLY) of the Pennsylvania Consolidated
3 Statutes, in minors, further providing for the offense of
4 sale of tobacco and for the offense of use of tobacco in
5 schools; AND, IN PREEMPTIONS RELATING TO MUNICIPALITIES, <--
6 FURTHER PROVIDING FOR TOBACCO.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 ~~Section 1. Sections 6305 heading, (a), (a.1), (f) and (k) <--~~
10 and 6306.1 heading, (a) and (d) of Title 18 of the Pennsylvania
11 Consolidated Statutes are amended to read:

12 ~~§ 6305. Sale of tobacco, nicotine products and electronic~~
13 ~~nicotine delivery systems to minors.~~

14 ~~(a) Offense defined. Except as set forth in subsection (f),~~
15 ~~a person is guilty of a summary offense if the person:~~

16 ~~(1) sells a tobacco product, nicotine product or ENDS to~~
17 ~~any minor;~~

1 ~~(2) furnishes, by purchase, gift or other means, a~~
2 ~~tobacco product, nicotine product or ENDS to a minor;~~

3 ~~(4) locates or places a [tobacco] vending machine~~
4 ~~containing a tobacco product, nicotine product or ENDS in a~~
5 ~~location accessible to minors;~~

6 ~~(5) displays or offers a cigarette for sale out of a~~
7 ~~pack of cigarettes; or~~

8 ~~(6) displays or offers for sale tobacco products,~~
9 ~~nicotine products or ENDS in any manner which enables an~~
10 ~~individual other than the retailer or an employee of the~~
11 ~~retailer to physically handle tobacco products, nicotine~~
12 ~~products or ENDS prior to purchase unless the tobacco~~
13 ~~products, nicotine products or ENDS are located within the~~
14 ~~line of sight or under the control of a cashier or other~~
15 ~~employee during business hours, except that this paragraph~~
16 ~~shall not apply to retail stores which derive 75% or more of~~
17 ~~sales revenues from tobacco products, nicotine products or~~
18 ~~ENDS.~~

19 ~~(a.1) Purchase. A minor is guilty of a summary offense if~~
20 ~~the minor:~~

21 ~~(1) purchases or attempts to purchase a tobacco product,~~
22 ~~nicotine product or ENDS; or~~

23 ~~(2) knowingly falsely represents himself to be at least~~
24 ~~18 years of age to a person for the purpose of purchasing or~~
25 ~~receiving a tobacco product, nicotine product or ENDS.~~

26 ~~***~~

27 ~~(f) Exceptions.—~~

28 ~~(1) The following affirmative defense is available:~~

29 ~~(i) It is an affirmative defense for a retailer to~~
30 ~~an offense under subsection (a) (1) and (2) that, prior to~~

1 ~~the date of the alleged violation, the retailer has~~
2 ~~complied with all of the following:~~

3 ~~(A) adopted and implemented a written policy~~
4 ~~against selling tobacco products, nicotine products~~
5 ~~or ENDS to minors which includes:~~

6 ~~(I) a requirement that an employee ask an~~
7 ~~individual who appears to be 25 years of age or~~
8 ~~younger for a valid photoidentification as proof~~
9 ~~of age prior to making a sale of tobacco~~
10 ~~products, nicotine products or ENDS;~~

11 ~~(II) a list of all types of acceptable~~
12 ~~photoidentification;~~

13 ~~(III) a list of factors to be examined in~~
14 ~~the photoidentification, including photo~~
15 ~~likeness, birth date, expiration date, bumps,~~
16 ~~tears or other damage and signature;~~

17 ~~(IV) a requirement that, if the~~
18 ~~photoidentification is missing any of the items~~
19 ~~listed in subclause (III), it is not valid and~~
20 ~~cannot be accepted as proof of age for the sale~~
21 ~~of tobacco products, nicotine products or ENDS. A~~
22 ~~second photoidentification may be required to~~
23 ~~make the sale of tobacco products, nicotine~~
24 ~~products or ENDS, with questions referred to the~~
25 ~~manager; and~~

26 ~~(V) a disciplinary policy which includes~~
27 ~~employee counseling and suspension for failure to~~
28 ~~require valid photoidentification and dismissal~~
29 ~~for repeat improper sales.~~

30 ~~(B) informed all employees selling tobacco~~

1 ~~products, nicotine products and ENDS through an~~
2 ~~established training program of the applicable~~
3 ~~Federal and State laws regarding the sale of tobacco~~
4 ~~products, nicotine products and ENDS to minors;~~

5 ~~(C) documented employee training indicating that~~
6 ~~all employees selling tobacco products, nicotine~~
7 ~~products and ENDS have been informed of and~~
8 ~~understand the written policy referred to in clause~~
9 ~~(A);~~

10 ~~(D) trained all employees selling tobacco~~
11 ~~products, nicotine products and ENDS to verify that~~
12 ~~the purchaser is at least 18 years of age before~~
13 ~~selling tobacco products, nicotine products and ENDS;~~

14 ~~(E) conspicuously posted a notice that selling~~
15 ~~tobacco products, nicotine products or ENDS to a~~
16 ~~minor is illegal, that the purchase of tobacco~~
17 ~~products, nicotine products or ENDS by a minor is~~
18 ~~illegal and that a violator is subject to penalties;~~
19 ~~and~~

20 ~~(F) established and implemented disciplinary~~
21 ~~sanctions for noncompliance with the policy under~~
22 ~~clause (A).~~

23 ~~(ii) An affirmative defense under this paragraph~~
24 ~~must be proved by a preponderance of the evidence.~~

25 ~~(iii) An affirmative defense under this paragraph~~
26 ~~may be used by a retailer no more than three times at~~
27 ~~each retail location during any 24-month period.~~

28 ~~(2) No more than one violation of subsection (a) per~~
29 ~~person arises out of separate incidents which take place in a~~
30 ~~24-hour period.~~

1 ~~(3) It is not a violation of subsection (a.1) (1) for a~~
2 ~~minor to purchase or attempt to purchase a tobacco product,~~
3 ~~nicotine product or ENDS if all of the following apply:~~

4 ~~(i) The minor is at least 14 years of age.~~

5 ~~(ii) The minor is an employee, volunteer or an~~
6 ~~intern with:~~

7 ~~(A) a State or local law enforcement agency;~~

8 ~~(B) the Department of Health or a primary~~
9 ~~contractor pursuant to Chapter 7 of the act of June~~
10 ~~26, 2001 (P.L.755, No.77), known as the Tobacco~~
11 ~~Settlement Act;~~

12 ~~(C) a single county authority created pursuant~~
13 ~~to the act of April 14, 1972 (P.L.221, No.63), known~~
14 ~~as the Pennsylvania Drug and Alcohol Abuse Control~~
15 ~~Act;~~

16 ~~(D) a county or municipal health department; or~~

17 ~~(E) a retailer.~~

18 ~~(iii) The minor is acting within the scope of~~
19 ~~assigned duties as part of an authorized investigation,~~
20 ~~compliance check under subsection (g) or retailer~~
21 ~~organized self compliance check.~~

22 ~~(iv) A minor shall not use or consume a tobacco~~
23 ~~product, nicotine product or ENDS.~~

24 * * *

25 SECTION 1. SECTION 6305 HEADING, (A) (4) AND (K) OF TITLE 18 <--
26 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:
27 § 6305. SALE OF TOBACCO PRODUCTS.

28 (A) OFFENSE DEFINED.--EXCEPT AS SET FORTH IN SUBSECTION (F),
29 A PERSON IS GUILTY OF A SUMMARY OFFENSE IF THE PERSON:

30 * * *

1 (4) LOCATES OR PLACES A [TOBACCO] VENDING MACHINE
2 CONTAINING A TOBACCO PRODUCT IN A LOCATION ACCESSIBLE TO
3 MINORS;

4 * * *

5 (k) Definitions.--As used in this section, the following
6 words and phrases shall have the meanings given to them in this
7 subsection:

8 "Cigarette." A roll for smoking made wholly or in part of
9 tobacco, irrespective of size or shape and whether or not the
10 tobacco is flavored, adulterated or mixed with any other
11 ingredient, the wrapper or cover of which is made of paper or
12 other substance or material except tobacco. The term does not
13 include a cigar.

14 "Cigarette license." A license issued under section 203-A or
15 213-A of the act of April 9, 1929 (P.L.343, No.176), known as
16 The Fiscal Code.

17 "Department." The Department of Revenue of the Commonwealth.

18 "Electronic cigarette." An electronic device that delivers
19 nicotine or other substances through vaporization and
20 inhalation.

21 "Electronic nicotine delivery system" or "ENDS." A product
22 or device used, intended for use or designed for the purpose of
23 ingesting a nicotine product. The term includes an electronic
24 cigarette.

25 "Minor." An individual under 18 years of age.

26 "Nicotine product." A product that contains or consists of
27 nicotine in a form that can be ingested by chewing, smoking,
28 inhaling or any other means.

29 "Pack of cigarettes." As defined in section 1201 of the act
30 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of

1 1971.

2 "Pipe tobacco." Any product containing tobacco made
3 primarily for individual consumption that is intended to be
4 smoked using tobacco paraphernalia.

5 "Retailer." A person licensed under section 203-A or 213-A
6 of the act of April 9, 1929 (P.L.343, No.176), known as The
7 Fiscal Code, or other lawful dealer in tobacco products, <--
8 nicotine products, nicotine delivery products and electronic
9 nicotine delivery systems RETAILER OF OTHER TOBACCO PRODUCTS. <--

10 "Smokeless tobacco." Any product containing finely cut,
11 ground, powdered, blended or leaf tobacco made primarily for
12 individual consumption that is intended to be placed in the oral
13 or nasal cavity and not intended to be smoked. The term
14 includes, but is not limited to, chewing tobacco, dipping
15 tobacco and snuff.

16 "Tobacco product." [A cigarette, cigar, pipe tobacco or <--
17 other smoking tobacco product or smokeless tobacco in any form,
18 manufactured for the purpose of consumption by a purchaser, and
19 any cigarette paper or product used for smoking tobacco.] AS <--

20 FOLLOWS:

21 (1) THE TERM INCLUDES:

22 (I) ANY PRODUCT CONTAINING, MADE OR DERIVED FROM
23 TOBACCO OR NICOTINE THAT IS INTENDED FOR HUMAN
24 CONSUMPTION, WHETHER SMOKED, HEATED, CHEWED, ABSORBED,
25 DISSOLVED, INHALED, SNORTED, SNIFFED OR INGESTED BY ANY
26 OTHER MEANS, INCLUDING, BUT NOT LIMITED TO, A CIGARETTE,
27 A CIGAR, A LITTLE CIGAR, CHEWING TOBACCO, PIPE TOBACCO,
28 SNUFF AND SNUS.

29 (II) ANY ELECTRONIC DEVICE THAT DELIVERS NICOTINE OR
30 ANOTHER SUBSTANCE TO A PERSON INHALING FROM THE DEVICE,

1 INCLUDING, BUT NOT LIMITED TO, ELECTRONIC NICOTINE
2 DELIVERY SYSTEMS, AN ELECTRONIC CIGARETTE, A CIGAR, A
3 PIPE AND A HOOKAH.

4 (III) ANY PRODUCT CONTAINING, MADE OR DERIVED FROM
5 EITHER:

6 (A) TOBACCO, WHETHER IN ITS NATURAL OR SYNTHETIC
7 FORM; OR

8 (B) NICOTINE, WHETHER IN ITS NATURAL OR
9 SYNTHETIC FORM, WHICH IS REGULATED BY THE UNITED
10 STATES FOOD AND DRUG ADMINISTRATION AS A DEEMED
11 TOBACCO PRODUCT.

12 (IV) ANY COMPONENT, PART OR ACCESSORY OF THE PRODUCT
13 OR ELECTRONIC DEVICE UNDER SUBPARAGRAPHS (I), (II) AND
14 (III), WHETHER OR NOT SOLD SEPARATELY.

15 (2) THE TERM DOES NOT INCLUDE:

16 (I) A PRODUCT THAT HAS BEEN APPROVED BY THE UNITED
17 STATES FOOD AND DRUG ADMINISTRATION FOR SALE AS A TOBACCO
18 CESSATION PRODUCT OR FOR OTHER THERAPEUTIC PURPOSES WHERE
19 THE PRODUCT IS MARKETED AND SOLD SOLELY FOR SUCH APPROVED
20 PURPOSE, SO LONG AS THE PRODUCT IS NOT INHALED.

21 (II) A DEVICE UNDER PARAGRAPH (1)(II) OR (III) IF
22 SOLD BY A DISPENSARY LICENSED UNDER THE ACT OF APRIL 17,
23 2016 (P.L.84, NO.16), KNOWN AS THE MEDICAL MARIJUANA ACT.

24 ~~{ "Tobacco vending" } "Vending machine." A mechanical or <--~~
25 ~~electrical device from which one or more tobacco products,~~ <--
26 ~~nicotine products or ENDS~~ are dispensed for a consideration.

27 SECTION 2. SECTION 6306.1 HEADING, (A) AND (D) OF TITLE 18 <--
28 ARE AMENDED AND THE SECTION IS AMENDED BY ADDING SUBSECTIONS TO
29 READ:

30 § 6306.1. Use of tobacco, ~~nicotine products or ENDS~~ PRODUCTS in <--

1 schools prohibited.

2 ~~(a) Offense defined. A pupil who possesses or uses tobacco, <--~~
3 ~~nicotine products or ENDS in a school building, a school bus or~~
4 ~~on school property owned by, leased by or under the control of a~~
5 ~~school district commits a summary offense.~~

6 * * *

7 (A) [OFFENSE DEFINED] PUPILS.--A PUPIL [WHO] COMMITS A <--
8 SUMMARY OFFENSE IF THE PUPIL POSSESSES OR USES [TOBACCO] A
9 TOBACCO PRODUCT:

10 (1) IN A SCHOOL BUILDING[,];

11 (2) ON A SCHOOL BUS OR OTHER VEHICLE OWNED BY, LEASED BY
12 OR UNDER THE CONTROL OF A SCHOOL DISTRICT; OR

13 (3) ON SCHOOL PROPERTY OWNED BY, LEASED BY OR UNDER THE
14 CONTROL OF A SCHOOL DISTRICT [COMMITTS A SUMMARY OFFENSE].

15 (A.1) OTHER PERSONS.--

16 (1) ANY PERSON, OTHER THAN A PUPIL, COMMITS A SUMMARY
17 OFFENSE IF THE PERSON USES A TOBACCO PRODUCT:

18 (I) IN A SCHOOL BUILDING;

19 (II) ON A SCHOOL BUS OR OTHER VEHICLE OWNED BY,
20 LEASED BY OR UNDER THE CONTROL OF A SCHOOL DISTRICT; OR

21 (III) ON SCHOOL PROPERTY OWNED BY, LEASED BY OR
22 UNDER THE CONTROL OF A SCHOOL DISTRICT.

23 (2) THE BOARD OF SCHOOL DIRECTORS MAY DESIGNATE CERTAIN
24 AREAS ON PROPERTY OWNED BY, LEASED BY OR UNDER THE CONTROL OF
25 THE SCHOOL DISTRICT WHERE TOBACCO PRODUCT USE BY PERSONS
26 OTHER THAN PUPILS IS PERMITTED. THE AREAS MUST BE NO LESS
27 THAN 50 FEET FROM SCHOOL BUILDINGS, STADIUMS OR BLEACHERS.

28 (A.2) POLICY.--

29 (1) THE BOARD OF SCHOOL DIRECTORS SHALL ESTABLISH A
30 POLICY TO ENFORCE THE PROHIBITION OF TOBACCO PRODUCT USE

1 UNDER THIS SECTION AND MAY FURTHER ESTABLISH POLICY RELATING
2 TO TOBACCO PRODUCT USE AT SCHOOL-SPONSORED EVENTS THAT ARE
3 HELD OFF SCHOOL PREMISES.

4 (2) THE BOARD OF SCHOOL DIRECTORS SHALL NOTIFY
5 EMPLOYEES, PUPILS AND PARENTS OF THE POLICY DEVELOPED IN
6 ACCORDANCE WITH PARAGRAPH (1) BY PUBLISHING THE INFORMATION
7 IN A STUDENT HANDBOOK AND PARENT NEWSLETTER AND ON POSTERS OR
8 OTHER EFFICIENT MEANS.

9 * * *

10 (C.1) PREEMPTION.--THIS SECTION PREEMPTS ANY MUNICIPAL
11 ORDINANCE OR SCHOOL BOARD REGULATION TO THE CONTRARY.

12 (d) Definitions.--As used in this section, the following
13 words and phrases shall have the meanings given to them in this
14 subsection:

15 "Electronic cigarette." An electronic device that delivers
16 nicotine or other substances through vaporization and
17 inhalation.

18 "Electronic nicotine delivery system" or "ENDS." A product
19 or device used, intended for use or designed for the purpose of
20 ingesting a nicotine product. The term includes an electronic
21 cigarette.

22 "Nicotine product." A product that contains or consists of
23 nicotine in a form that can be ingested by chewing, smoking,
24 inhaling or any other means. ~~The term shall not include, with~~ <--
25 ~~respect to possession or use by a student who is 18 years of age~~
26 ~~or older, any smoking cessation product specifically approved by~~
27 ~~the United States Food and Drug Administration for use in~~
28 ~~reducing, treating or eliminating nicotine or tobacco~~
29 ~~dependence.~~

30 "Pupil." A person between the ages of 6 and 21 years who is

1 enrolled in school.

2 "School." A school operated by a joint board, board of
3 directors or school board where pupils are enrolled in
4 compliance with Article XIII of the act of March 10, 1949
5 (P.L.30, No.14), known as the Public School Code of 1949,
6 including [area vocational schools, ~~charter schools~~ and <--
7 intermediate units] A CAREER AND TECHNICAL SCHOOL, CHARTER <--
8 SCHOOL AND INTERMEDIATE UNIT.

9 "Tobacco PRODUCT." ~~A lighted or unlighted cigarette, cigar, <--
10 cigarillo, little cigar, pipe or other lighted smoking product
11 and smokeless tobacco in any form, including chewing tobacco,
12 snuff, dip or dissolvable tobacco pieces. [A LIGHTED OR <--
13 UNLIGHTED CIGARETTE, CIGAR, PIPE OR OTHER LIGHTED SMOKING
14 PRODUCT AND SMOKELESS TOBACCO IN ANY FORM.] AS FOLLOWS:~~

15 (1) THE TERM INCLUDES:

16 (I) ANY PRODUCT CONTAINING, MADE OR DERIVED FROM
17 TOBACCO OR NICOTINE THAT IS INTENDED FOR HUMAN
18 CONSUMPTION, WHETHER SMOKED, HEATED, CHEWED, ABSORBED,
19 DISSOLVED, INHALED, SNORTED, SNIFFED OR INGESTED BY ANY
20 OTHER MEANS, INCLUDING, BUT NOT LIMITED TO, A CIGARETTE,
21 A CIGAR, A LITTLE CIGAR, CHEWING TOBACCO, PIPE TOBACCO,
22 SNUFF AND SNUS.

23 (II) ANY ELECTRONIC DEVICE THAT DELIVERS NICOTINE OR
24 ANOTHER SUBSTANCE TO A PERSON INHALING FROM THE DEVICE,
25 INCLUDING, BUT NOT LIMITED TO, ELECTRONIC NICOTINE
26 DELIVERY SYSTEMS, AN ELECTRONIC CIGARETTE, A CIGAR, A
27 PIPE AND A HOOKAH.

28 (III) ANY PRODUCT CONTAINING, MADE OR DERIVED FROM
29 EITHER:

30 (A) TOBACCO, WHETHER IN ITS NATURAL OR SYNTHETIC

1 FORM; OR

2 (B) NICOTINE, WHETHER IN ITS NATURAL OR
3 SYNTHETIC FORM, WHICH IS REGULATED BY THE UNITED
4 STATES FOOD AND DRUG ADMINISTRATION AS A DEEMED
5 TOBACCO PRODUCT.

6 (IV) ANY COMPONENT, PART OR ACCESSORY OF THE PRODUCT
7 OR ELECTRONIC DEVICE UNDER SUBPARAGRAPHS (I), (II) AND
8 (III), WHETHER OR NOT SOLD SEPARATELY.

9 (2) THE TERM DOES NOT INCLUDE:

10 (I) A PRODUCT THAT HAS BEEN APPROVED BY THE UNITED
11 STATES FOOD AND DRUG ADMINISTRATION FOR SALE AS A TOBACCO
12 CESSATION PRODUCT OR FOR OTHER THERAPEUTIC PURPOSES WHERE
13 THE PRODUCT IS MARKETED AND SOLD SOLELY FOR SUCH APPROVED
14 PURPOSE, SO LONG AS THE PRODUCT IS NOT INHALED.

15 (II) A DEVICE UNDER PARAGRAPH (1) (II) OR (III) IF
16 SOLD BY A DISPENSARY LICENSED UNDER THE ACT OF APRIL 17,
17 2016 (P.L.84, NO.16), KNOWN AS THE MEDICAL MARIJUANA ACT.

18 SECTION 3. SECTION 301 OF TITLE 53 IS AMENDED TO READ:

19 § 301. TOBACCO PRODUCT.

20 (A) GENERAL RULE.--EXCEPT AS SET FORTH IN SUBSECTION (B),
21 THE PROVISIONS OF 18 PA.C.S. § 6305 (RELATING TO SALE OF TOBACCO
22 PRODUCTS) SHALL PREEMPT AND SUPERSEDE ANY LOCAL ORDINANCE OR
23 RULE CONCERNING THE SUBJECT MATTER OF 18 PA.C.S. § 6305 AND OF
24 SECTION 206-A OF THE ACT OF APRIL 9, 1929 (P.L.343, NO.176),
25 KNOWN AS THE FISCAL CODE.

26 (B) EXCEPTION.--THIS SECTION DOES NOT PROHIBIT:

27 (1) LOCAL REGULATION AUTHORIZED BY THE ACT OF APRIL 27,
28 1927 (P.L.465, NO.299), REFERRED TO AS THE FIRE AND PANIC
29 ACT.

30 (2) LOCAL REGULATION ENACTED PRIOR TO JANUARY 1, 2002.

1 SECTION 4. REPEALS ARE AS FOLLOWS:

2 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER
3 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THE AMENDMENT OR
4 ADDITION OF 18 PA.C.S. § 6306.1(A), (A.1), (A.2) AND (C.1).

5 (2) SECTION 3.5 OF THE ACT OF APRIL 27, 1927 (P.L.465,
6 NO.299), REFERRED TO AS THE FIRE AND PANIC ACT, IS REPEALED.

7 Section 2 5. This act shall take effect in 60 days.

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